

Appl. No. 09/979,531
Atty. Docket No. AA405
Amdt. dated 12/31/2003
Reply to Office Action of 10/06/03
Customer No. 27752

REMARKS/ARGUMENTS

Claims 3, 11 and 12 have been canceled herewith as redundant in view of the amendments to Claim 1. Claims 1, 2, 4-10 and 13 are now in the case.

Claim 1 has been amended to : i.) recite the use of the surfactant paste in combination with spray dried granules and at least one material selected from the recited Markush group. Basis is in Claim 1 as originally presented, taken in combination with the teachings of Examples 1-3, each of which employs a surfactant paste and spray dried granules. Claim 1 has been further amended to recite the residence times, per original Claim 3. Claim 1 has been further amended to recite that the particles of the process have a specified circularity (page 11, l. 15) and aspect ratio (page 11, l. 16-17). Claims 5 and 13 have been amended to depend from Claim 1. Claim 10 has been amended to meet the §112 rejection (below). It is submitted that these amendments add no new matter, and entry is requested.

Rejection Under 35 USC 112

Claim 10 has been rejected, for reasons of record at page 2 of the Office Action. It is submitted that the amendment presented herewith meets the rejection. Withdrawal of the rejection is requested.

Rejection Under 35 USC 102

Claim 1 stands rejected over EP 0,816,485, for reasons of record at pages 2-3 of the Office Action.

Applicants respectfully traverse the rejection, to the extent it may apply to the claims as amended herewith.

The process as now set-forth in amended Claim 1 recites: the use of spray dried granules with other recited components, the operational parameters of the mixers, and the definitional parameters of the particles which result from the process. Inasmuch as these defining elements are not taught in EP '485, it is submitted that the rejection under §102 cannot be maintained, as a matter of law. Reconsideration and withdrawal of the rejection on this basis are requested.

Rejections Under 35 USC 103

Claims 1-13 stand rejected over U.S. 4,828,721, for reasons of record at pages 3-5 of the Office Action.

Applicants respectfully traverse the rejections on this basis, to the extent they may apply to the amended claims now in the case.

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At the outset, it is noted that the present invention relates to the problem of detergent "clumping". (Page 1, last paragraph.) Such clumping comprises undesirable dissolution phenomena, e.g., "lump-gel" formation. (Page 2, l. 3-8.) The present invention addresses this (and other) problems by providing a process which results in detergent particles which are defined by size and shape parameters. (Page 10, l. 5-11, Page 11, l. 3-25)

In contrast, the '721 patent relates to the formation of clay agglomerates which can be used in detergents, especially as fabric softeners. (Abstract)

While the clay agglomerates of '721 fall within "particle sizes of a certain desired range" (Abstract), nothing therein would appear to suggest that such agglomerates would, or should, have the herein-defined parameters of circularity, aspect ratio, etc., recited in the amended claims.

Moreover, it is noted that the agglomerates of '721 are formed by combining an aqueous surfactant with the clay. Clay, of course, is water-insoluble.

In sharp contrast, the agglomeration process herein uses spray-dried granules as one component. As is well-known, such granules are water-soluble.

Clearly, there is nothing in '721 to suggest that the insoluble clay could, or should, be replaced with a soluble material with any expectation of a successful outcome of the modified process.

The case law in this regard is compelling:

The consistent criterion for a determination of obviousness is whether the prior art would have suggested to one of ordinary skill in the art that this process should be carried out and would have a reasonable likelihood of success viewed in the light of the prior art.... Both the suggestion and the expectation of success must be found in the prior art, not in the applicant's disclosure. [Emphasis supplied] See *In re Dow Chemical Co.*, 837 F. 2d 469; 1988 U.S. App Lexis 587; 5USPQ2d (BNA) 1529 (Fed. Cir. Jan. 25, 1988) and cases cited therein, including *Orthopedic Equipment Co. v. United States*, 702 F. 2d 1005, 1013, 217 USPQ 193, 200 (Fed. Cir. 1983).

It is submitted that one of skill in the art would have no expectation that the substitution of a spray dried granule for a clay would, or could, result in a workable process. This is particularly true in the present circumstances wherein '791 describes in detail how the aqueous surfactant wets the clay and is absorbed into it to form agglomerates. (Col. 2, l. 9; Col. 4, l. 29-33.)

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Importantly, when a spray-dried material is used in '721 to provide a fully-formulated detergent, the spray-dried material is a builder which, "...is to be mixed with the LAS-bentonite agglomerate...." (Col. 8, l. 30-34) [Emphasis supplied]

Clearly, at this stage of the '721 process the clay agglomerates have already been prepared by combining the LAS and the clay; the spray dried builder is then simply blended-in.

In sharp contrast, the present invention uses the spray dried material to make the finished detergents by agglomeration with either dry agglomerates, wet agglomerates or detergent adjuncts by using a surfactant paste.

In this regard, attention is directed to *In re Linter*, 458 F. 2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972), cited at **MPEP 2143.01** for the proposition that:

In determining the propriety of the Patent Office case for obviousness in the first instance, it is necessary to ascertain whether or not the reference teachings would appear to be sufficient for one of ordinary skill in the relevant art having the reference before him to make the proposed substitution, combination or other modification. [Emphasis supplied]

Again, it is submitted that nothing in '721 would suggest modifying the disclosed clay agglomeration process by substituting spray dried granules for the clay.

Moreover, nothing in '721 teaches or suggests the operational parameters now recited in the claims. Such parameters, taken together with the recited components (including the spray dried granules), are designed to yield a product having the above-mentioned product size/shape parameters; said parameters are nowhere found in '721. The amended claims now recite these various parameters as limitations on the overall process.

In light of the foregoing, it is further submitted that the rejections (to the extent they may apply to the amended claims) are not supported by substantial evidence because the cited '721 document does not support each limitation of the claims. See *In re Vaeck*, 947 F. 2d 488, 493, 20 USPQ 2d 1438, 1443 (Fed. Cir. 1991).

With regard to the case law regarding optimization, cited at pages 4-5 of the Office Action, it is submitted that the issue herein is not optimization, but rather, extensive modification of the teachings of '721. Even assuming *arguendo* that the '721 could be modified to meet the invention defined in the claims as now amended, the case law is clear. The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification. See, for example, *In re Sernaker*, 702 F. 2d 989, 995-96, 217 USPQ (BNA) 1, 6-7 (Fed. Cir. 1983).

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In light of the foregoing, reconsideration and withdrawal of the rejections on this basis are requested.

Double Patenting

Claims 1 and 4 stand rejected for obviousness-type double patenting over U.S. 6,555,514, for reasons of record at pages 5-6 of the Office Action.

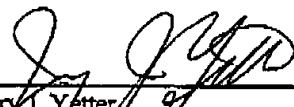
Submitted herewith is a Terminal Disclaimer over the '514 patent. Withdrawal of the rejection on this basis is requested.

In view of the amendments to the claims, the arguments and controlling case law, and the Terminal Disclaimer, early and favorable action in the case is requested.

Respectfully submitted,

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